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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,474	01/23/2002	James L. Tracy	CM02045K	6374

7590 11/27/2006

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/055,474	Applicant(s) TRACY ET AL.	
	Examiner Jeff Piziali	Art Unit 2629	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 25 August 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.



Jeff Piziali
22 November 2006

Continuation of 10. Other (including any explanation in support of the above items):

First and foremost, the appellants are cordially thanked for the 'Brief on Behalf of Appellants Under 37 CFR 41.37' filed 25 August 2006. However, several seemingly non-compliant issues have been discovered in the aforementioned response, requiring attention before examination may continue.

37 CFR 41.37(c)(1)(ii) requires the 'Related Appeals and Interferences' section of the brief must contain, "A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section."

37 CFR 41.37(c)(1)(x) requires the 'Related Proceedings Appendix' section of the brief must contain, "An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section."

MPEP 1205.02 further explains the 'Related Appeals and Interferences' section of the brief must contain, "A statement identifying all prior and pending appeals, judicial proceedings or interferences known to the appellant which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Appellant includes the appellant, the appellant's legal representative and the assignee. Such related proceedings must be identified by application number, patent number, appeal number (if available) or interference number (if available). The statement is not limited to copending applications. The requirement to identify related proceedings requires appellant to identify every related proceeding (e.g., commonly owned applications having common subject matter, claim to a common priority application) which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by 37 CFR 41.37(c)(1)(x)."

At present, the 'Argument' section of the brief identifies "Verdegaal Bros. v. Union Oil Co. of California" and "Richard son v. Suzuki Motor Co." (see Page 7, Bottom Paragraph of the brief filed 25 August 2006) as constituting decisions rendered by a court or the Board which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the instantly pending appeal. As such, the 'Related Appeals and Interferences' section of the brief must contain a statement identifying "Verdegaal Bros. v. Union Oil Co. of California" and "Richard son v. Suzuki Motor Co." by application, patent, appeal or interference number. Furthermore, the 'Related Proceedings Appendix' section of the brief must contain an appendix containing a copy of the "Verdegaal Bros. v. Union Oil Co. of California" and "Richard son v. Suzuki Motor Co." decisions.

Furthermore, 37 CFR 41.37(c)(1)(ix) requires the 'Evidence appendix' section of the brief must contain, "An appendix containing copies of any evidence submitted pursuant to § 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief."

At present, the 'Argument' section of the brief relies upon the evidence of "Di Santo (US 4,655,897)" (see Page 8, Top Paragraph of the brief filed 25 August 2006). However, the 'Evidence appendix' section of the brief lacks a statement setting forth where in the record that evidence was entered in the record by the examiner.

At least for such reasoning, the pending 'Brief on Behalf of Appellants Under 37 CFR 41.37' filed 25 August 2006 is deemed non-compliant.

Please note: The appeal brief has not been checked to the extent necessary to determine the presence of all possible non-compliance errors. If additional issues of non-compliance are discovered in a subsequent response, yet another Notification of Non-Compliant Appeal Brief will be necessitated. Appellants' cooperation is requested in correcting any other errors of which appellants may become aware in the brief.

The appellants are hereby notified that the examiner's art unit has recently changed from Art Unit 2673 to Art Unit 2629, please direct all future correspondence accordingly. Thank you.



Jeff Piziali
22 November 2006